IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2006

CORAM:

THE HONOURABLE MRS.JUSTICE PRABHA SRIDEVAN

Writ Petition No.25433 of 2006

Association of Management of
Private Colleges, represented
by its President, Dr.M.Aruchami
and Secretary, Kongunaadu Arts
and Science College (Autonomous),
Coimbatore-641 029. .. Petitioner

Vs.

1. The Secretary,
   University Grants Commission,
   Bahadur Shah Marg, New Delhi-110 002.

2. University of Madras,
   represented by its Registrar,
   Chepauk, Chennai-600 005.

3. Manonmaniam Sundaranar Univeristy,
   represented by its Registrar,
   Abishekapatti, Tirunelveli-627 012.

4. Madurai Kamaraj Manonmaniam Sundaranar
   University Teachers Association (MUTA),
   rep. by its President, Registered Office
   at No.6, Kakka Thope, Madurai. .. Respondents

(Respondent No.4 impleaded on 12.09.2006
vide M.P.No.3 of 2006)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to (i) The Communication No.A-II/ASO-1/PRES.QLN/2004/1924 dated 23-11-2004 on the 2nd respondent University and (ii) Communication dated 03.07.2006 by the Letter No.MSU/CD/OA/ Gen/2002 issued by the 3rd respondent herein Viz., the Registrar, Manonmaniam Sundaranar University, Tirunelveli, pursuant to (iii) UGC Letter No.F.No.3-1 (2000) (PS) dated 05.12.2005 and (iv) UGC Leter No.F.3-1/2000 (PS) dated 12.10.2004 (v) D.O. No.F3-1/2000 (PS) dated 04.04.2000, enclosing D.O. No.F3-1/2000 (PS) dated March 2000, more particularly 3.1.0 and 3.5.0 of the above said notification and quash the same and consequently direct the respondents

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herein to approve the appointment of Teachers, Principals, Professors and Readers as hitherto done before.

For petitioner : Mr.Haridoss, Sr.Counsel
For respondents : Mr.S.Udayakumar, SCGSC for R1.
Mr.Kandavadivel Doraiswamy, for R2.
Mr.V.Govardhan for
M/s.Row & Reddy for R3

O R D E R

The Association of Management of Private Colleges has filed this writ petition to quash the order dated 23.11.2004 issued by the University of Madras. By this communication, the colleges were informed that the procedure laid down in the U.G.C. Regulation, 2000 for constitution of a Selection Committee for appointment to the post of Principal and other teaching posts in affiliated colleges for this University should be "strictly followed while their selection". Manonmaniam Sundaranar University, the third respondent herein, had, in line with the above communcation, informed all the Secretaries and Principals of the affiliated colleges that the Selection Committee should be constituted as per the U.G.C. Regulations. According to the petitioner, this insistence is irrational, arbitrary and against the powers of the U.G.C.

2. Learned Senior Counsel appearing for the petitioner submitted that all these years, appointments have been made by the College Committee as per the qualifications prescribed by the University and there was no problem and there is no explanation as to how the U.G.C. can now stipulate, the manner in which the Selection Committee should be constituted. The procedure for instituting the Selection Committee is ultravires to the statutes and Regulations of the University and the U.G.C. Act. Learned Senior Counsel, in particular, pointed out that the words used in the Regulations are "Selection Committees are recommended by the U.G.C". The learned Senior Counsel relied on the Supreme Court Judgment reported in (1974) 4 SCC 788, in the case of Naraindas Indurkhya Vs. The State of Madhya Pradesh and Others, wherein the question was regarding the prescription of text books and whether the text books recommended by the Board of Secondary Education can be said to be 'in force' immediately before the appointed day of The Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 (hereinafter referred to as the Act of 1965). The Supreme Court drew the fine distinction between the words "recommendation" and "prescription", and held a recommendation has only a persuasive effect. Learned Senior Counsel, also submitted that G.O.Ms.No.111 Higher Education dated 24.03.1999 which provides for constitution of Selection Committee, was challenged in W.P. No.17042 of 1999 and was quashed on the ground that it interferes with the power of the College Committee constituted under the Tamil Nadu Private Colleges Regulation Act. These U.G.C. Regulations have come into force in the year 2000. The learned Senior Counsel submitted that while it was open to the

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U.G.C. to prescribe the necessary qualifications for the teachers, that power cannot be extended to prescribing or recommending, and enforcing on the colleges the constitution of Selection Committee. The learned Senior Counsel also relied on the Supreme Court Judgment reported in (2004) 6 SCC 224 in the case of Brahmo Samaj Education Society and Others Vs. State of W.B. and Others, wherein it was held that the control referred to in Paragraphs 71, 72 and 73 of the Supreme Court Judgment reported in (2002) 8 SCC 481 in the case of T.M.A. Pai Foundation Vs. State of Karnataka, regarding the right of the State to regulate the functioning of the Educational Institutions cannot extend to the day-to-day administration of the institution. The Supreme Court also observed that receiving aid from State coffers cannot be treated as justification for imposing of any restrictions that cannot be imposed otherwise.

3. Learned Counsel appearing for the University of Madras, the second respondent herein, learned counsel appearing for the third respondent and also the learned Senior Central Govt. Standing Counsel appearing for the first respondent, submitted that all the the same points were raised before D.Murugesan, J. in 2006 Writ L.R. 390. Against this, Writ Appeal No.585 of 2006 has been filed and is pending before the Division Bench.

4. There is no doubt that the petitioner's college come under the control of U.G.C., the petitioner themselves admit it. The functions of the Commission under Section 12 of the U.G.C. Act are wide. The Regulations, 2000 under which the U.G.C. claims that it has the right to stipulate the constitution of the Selection Committee reads as follows:

> "The University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000".

These Regulations are issued under Section 26(1)(e) & (g) and Section 14 of the U.G.C. Act.

5. Section 14 of the U.G.C. Act, reads as follows:

> "14. Consequences of failure of Universities to comply with recommendations of the Commission.-If any University grants affiliation in respect of any course of study to any college referred to in sub-section (5) of section 12-A in contravention of the provision of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26 the Commission, after taking into consideration the cause, if any, shown by the University for such failure or contravention may

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withhold from the University the grants proposed to be made out of the Fund of the Commission.

Section 26(1)(e) & (g) reads as follows:

"(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions;"

"(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities;"

Regulation 3, reads as follows:

"3. Consequences of failure of universities to comply with recommendations of the Commission, as per provisions of Section 14 of the University Grants Commission Act, 1956. - If any University grants affiliation in respect of any course of study to any college referred to in sub-section (5) of section 12-A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendations made by the Commission under section 12 or section 13, or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25 or of any regulations made under clause (e) or clause (g) of sub-section (1) of section 26, the Commission after taking into consideration the clause, if any, shown by the University for such failure or contravention, may withhold from the University the grants proposed to be made out of the Fund of the Commission."

In view of the language of Section 14 extracted above and Regulation 3, extracted above, it is futile to contend that the recommendations of the U.G.C. are only persuasive in nature. It is clear that since the consequence of failure to comply with the recommendations are severe as seen above, the Universities are bound to comply with the recommendations of U.G.C. strictly.

6. In 2006 Writ L.R. 390, a Reader working in Kamaraj College appeared before the College Committee for appointment to the post of selection grade lecturers / Readers with Ph.D. He challenged the rejection of his application on the ground that in exercise of powers under Section 12 and 26 of the University Grants Commission Act, the Regulations were framed prescribing educational qualifications for the post of Principal in Colleges as well as for constitution of a committee of Selected Candidates for that post. In addition, he raised other issues as well. The third respondent in the present writ petition was the third respondent in the above case. On behalf of the college, it was contended, as is contended

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here, that recommendations of the U.G.C. in respect of the constitution of the Committee to select the candidate for the post of Principal is not binding on the college as they are only "recommendatory in nature". It was also submitted that Section 14(b) of the Manonmaniam Sundaranar University Act and the provisions of the Tamil Nadu Private Colleges Regulation Act empower the College Committee to appoint the teachers and other staffs in that college and the recommendations of the U.G.C. which is only in the nature of an executive order, cannot have overriding effect on the provision of the Tamil Nadu Private Colleges Regulations Act or the University Act. The learned Judge referred to JT 1996 (8) SC 234 in the case of University Grants Commission Vs. Sadhana Chaudhary and others, etc., wherein it was held that the very important duty is cast upon the Commission, namely, the University Grants Commission to take all such steps as it may think fit for the determination and maintenance of standards of teaching and it was answered that the power to require those who possess educational qualifications required for holding the post of Lecturers, to appear for a written test. The learned Judge observed that it is apparent that the Commission will have the power to recommend to any University the measures necessary for reform and improvement. Thereafter, the learned Judge specifically referring to the Regulations, 2000 which is the subject matter of this writ petition observed, "In this context, it must be seen as to whether the U.G.C. were not only to prescribe the educational qualifications for teachers but also to prescribe for a constitution of a committee to interview the candidate". The following paragraphs are also extracted from the said judgment:

> "18. It appears that the Government of India constituted Rasthogi Committee to recommend the revision of pay scales of College and University Teachers and other officers of Colleges and Universities. Certain recommendations were made by the Committee and the same were accepted by UGC. The Government of India also accepted the recommendations of the UGC and decided to implement the revision of pay scales. The Government of India also agreed to provide financial assistance to the State Governments for implementing the revised scales subject to certain conditions. This is obvious from the first para of the Government Order Ms.No.111 dated 24.3.1999.
>
> > "The Rasthogi Committee appointed by the Government of India recommended revision of Pay scales of college and University Teachers and other Officers of Colleges and Universities which was accepted by the University Grants Commission. The Government of India decided to accept the recommendations of the University Grants Commission and implement the revision of Pay with effect from 1st January, 1996. The Government of India have agreed to provide financial assistance to the State Governments for implementing the revised pay scales subject to the following conditions.""

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"27. Coming to the provisions of Tamil Nadu Private Colleges (Regulation) Act, under Section 11, an aided non-minority institution shall form a college committee. The function of the college is enumerated under Section 14(b) of the Act. Section 14(1)(b) of the Act contemplates the functions of the college committee as well the responsibility of the educational agency to appoint teachers and other staffs which selecting the candidates, the College shall follow the norms relating to the eligibility and qualifications prescribed by UGC."

It was contended by the college that it is the College Committee which is vested with the powers to select and appoint the candidates. Rejecting this, the learned Judge held as follows:

"29. A combined reading of Section 11 and 14(b) of Tamil Nadu Private Colleges (Regulation) Act and Rules shows that they are not inconsistent with Sections 12 and 26(e) of the UGC Act and they operate in different field. Sections 11 and 14(b) and Rule 8 empowers the College Committee to make appointment. The power of the College Committee to make appointment to the teaching post as contemplated under Section 14 (b) of the Act cannot be extended to constitute a selection committee to select the candidate as the power is conferred on UGC. Section 12 read with 26(e) relates to the power of UGC to prescribe qualification of candidate to be appointed as teachers. In the event, the UGC makes regulations prescribing qualification, the same shall be binding on the University and the colleges affiliated to such University."

"31. The constitution of selection committee is referable to regulation 3.5.0 of the UGC Regulations. The very same regulation relating to the constitution of the committee is reproduced in the impugned order. Though the Government Order was issued in exercise of power under Article 162 for the purpose of extending the benefit of revision of pay scales, insofar as the qualification for the post of Principal and constitution of committee was incorporated in the said order as per the statutory regulations of the UGC. Regulations made under Section 26 of the Act has statutory force. The Apex Court in the judgment reported in University of Delhi Vs. Raj Singh and others (A.I.R. 1995 SC 336) has held that UHC was the competent authority to prescribe the educational qualifications that are ordinarily required to the post of a Lecturer including the principal and such regulations shall statutory force.

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32. So far as the educational qualification prescribed by the regulations framed by UGC, there cannot be any dispute that the college should abide by the minimum qualification while selecting the candidate for the post of Principal. In fact, in the impugned order, the eligibility norms notified by the College is in tune with the minimum educational qualifications prescribed in the regulations framed by UGC.

33. The question still considered is as to whether the power of UGC to make regulations under Section 26(e) of the Act could be extended even prescribing the constitution of a committee for selecting the candidates for the post of principal. Entry 66 relates not only to for coordination but also determination of the standards in higher education. Determination of standards in higher education includes maintaining the excellence in the college. The post of Principal is pivotal importance in the educational institution. In maintaining the standard vis-a-vis the appointment of Principal it would be relevant to point out the role of the Heads of the educational institutions as observed by the Apex Court as well as the High Court."

"39. Of course, an aided non-minority educational institution have a college committee to appoint teachers. The power for the college committee to appoint teachers cannot be disputed. However, such power should be exercised in the manner prescribed under regulations of the UGC. When once the college is bound to adopt the minimum educational qualifications prescribed in the regulation framed by UGC, it is equally bound to make selection through properly considered committee as per the said regulation. The constitution of the selection committee prescribed in Regulation 3.5.0 consists of the Chairperson of the Governing Board as Chairperson, one member of the Governing Board to be nominated by the Chairperson, two Vice-Chancellor's nominees and three experts consisting of the Principal of a College, a Professor and an accomplished educationist. The majority of the members of the Selection Committee is from the College Committee except in the place of two nominees of the Vice-Chancellor, only one University representative figures as Member in the College Committee. That apart, out of three experts, the representative from the accomplished educationist not below the rank of a Professor to be nominated by the Board out of a panel of experts approved by the

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Vice-Chancellor. It is not so in the College Committee. The above committee is only to ensure the maintenance of the standard in the education as the standard of education to students shall depend upon the appointment of a qualified person. Only in this context, the Committee constituted by UGC is insisted to select the candidate. In order to consider the appointment, the college committee has to necessarily depend upon the recommendations of the committee constituted in accordance with the regulations. To this extent the power of the college committee cannot be extended even for selecting candidates ignoring the regulations of the UGC in regard to composition of selection committee. That apart When once the regulations are adopted by the University, the 5th respondent college affiliated to the University is bound to follow the regulations. In this context, the constitution of the committee to select the post of Principal should be only in accordance with the conditions prescribed under the regulation of UGC. There is no dispute that the committee which interviewed and selected the 6th respondent for the post of Principal was not in conformity with the composition of the committee prescribed in UGC Act and to this extent, the selection of the 6th respondent cannot be held to be valid."

7. The learned Judge has also referred to the judgment in W.P. Nos.17309 and 17042 of 1999 by which G.O.Ms.No.111 dated 24.03.1999 was quashed, and has observed as follows:

"42. The learned senior counsel appearing for the respondent would rely upon the judgment reported in The Association of Managements Private Colleges vs Government of Tamil Nadu (2000(IV)CTC641). In my considered opinion, UGC regulations prescribing the minimum educational qualifications for the post of Principal and the composition of selection committee to select a candidate were not brought to the notice of this Court and the judgment was rendered on the ground that the said Government Order was issued in exercise of the power under Article 162 of the Constitution of India and without reference to the fact that it was issued on the basis of the regulations. Therefore, the said decision cannot be pressed into service."

8. All the questions raised in this writ petition, Viz.,

a) the power of UGC to issue Regulations;

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b) the duty of the University and College to follow the UGC guidelines;
c) the question whether the UGC Regulations can be ignored since they are only recommendatory in nature;
d) the effect of the judgment in 2000 (IV)CTC 641,
have been dealt with, in the judgment reported in 2006 Writ L.R. 390, cited supra and I see no reason to differ from the same and the submissions advanced do not persuade me to hold otherwise.

9. The writ petition is therefore dismissed. Consequently, M.P. Nos.1 and 2 of 2006 are closed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
University Grants Commission,
Bahadur Shah Marg, New Delhi-110 002.

2. The Registrar,
University of Madras,
Chepauk, Chennai-600 005.

3. The Registra,
Manonmaniam Sundaranar Univeristy,
Abishekapatti, Tirunelveli-627 012.

4. The President
Madurai Kamaraj Manonmaniam Sundaranar
University Teachers Association (MUTA),
Registered Office at No.6, Kakka Thope, Madurai.

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TJL(CO)
RVL 04.10.2006

1 cc To Mr.K.Shakespear, Advocate, SR.42247.
1 cc To Mr.S.Udayakumar, SCGSC, SR.42433.
1 cc To Mr.Kandavadivel Doraisami, Advocate, SR.42874.
1 cc To Mrs.Hema Sampathkumar, Advocate, SR.42375.
1 cc To M/S.Row and Reddy, Advocate, SR.42302.

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